

LETTER OPINION
94-L-94

April 6, 1994

Nancy J. Lewis
Deputy Securities Commissioner
State Capitol, 5th Floor
600 East Boulevard
Bismarck, ND 58505

Dear Ms. Lewis:

Thank you for your March 7, 1994, letter on behalf of Commissioner Hoovestol requesting an opinion whether N.D.C.C. ? 10-04-12(2) requires that a hearing be conducted within fifteen days, but not earlier than five days, after the request for hearing has been made.

N.D.C.C. ? 10-04-12(2) provides:

Whenever a person requests a hearing in accordance with the provisions of this section, the commissioner shall immediately set a date, time, and place for such hearing and shall forthwith notify the person requesting such hearing thereof. The date set for such hearing shall be within fifteen days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting such hearing.

In construing a statute, consideration must be given to the ordinary sense in which words are used, the context in which they are used, and the rules of grammar. N.D.C.C. ?? 1-02-02, 1-02-03. Furthermore, "a statute must be construed as a whole to determine the legislative intent, and if possible, the entire statute must be given meaning because the law neither does nor requires idle acts." State ex rel. Kusler v. Sinner, 491 N.W.2d 382, 385 (N.D. 1992).

The first sentence of subsection two provides that the Commissioner "shall immediately set a date, time, and place for such hearing and shall forthwith notify the person requesting such hearing thereof." N.D.C.C. ? 10-04-12(2). This sentence provides the requirements for when the date of hearing must be set - immediately. The second sentence of subsection two provides that "the date set for such hearing shall be within fifteen days, but not earlier than five days, after the request for hearing is made." N.D.C.C. ? 10-04-12(2). The word "set" in this sentence is an adjective modifying the word "date." The American Heritage Dictionary, 1122

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(2d College Ed. 1991) ("adj . . . fixed . . . a set time . . . ").
Thus, this sentence requires that the date for the hearing, not the setting of the hearing, must be within fifteen days, but not earlier than five days, after the request for hearing.

If the second sentence is construed to relate to the scheduling of the hearing instead of when the hearing must be actually held, then the Legislature has performed an idle act by addressing the scheduling of the hearing twice, requiring that the Commissioner set a date, time, and place for the hearing immediately and within fifteen days, but not earlier than five days, after the request for hearing is made. In fact, reading the second sentence of section two as relating to setting the hearing creates a conflict; the statute would then require the Commissioner to set the hearing immediately, while at the same time prohibiting the Commissioner from setting the hearing within five days of the hearing request.

Furthermore, there is no apparent reason why the Legislature would require the Commissioner to wait at least five days after the request to set a date for the hearing. A requirement that the hearing not be held within five days after the request for hearing, however, would give the person requesting the hearing adequate time to prepare.

Finally, it should be noted that the second sentence of subsection two permits the Commissioner and the person requesting the hearing to waive the time requirements. This phrase relates to when the actual hearing will take place rather than a time frame within which the Commissioner must schedule the hearing because there seldom, if ever, is a need to delay the scheduling of a hearing while the hearing itself could benefit by additional time to gather evidence or to allow the parties to arrange a time where everyone required could attend.

In conclusion, it is my opinion that N.D.C.C. ? 10-04-12(2) requires that the hearing be held within fifteen days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the Commissioner and the person requesting such hearing. If this interpretation creates an administrative burden for your office, I suggest that you seek agreement of the person requesting the hearing to have the hearing set for
a later date. Alternatively, you may choose to seek an appropriate amendment to N.D.C.C. ? 10-04-12(2) at the next legislative session.

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Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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